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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,430	11/25/2003	Ncil Young	510703-7	6240

7590 12/18/2007  
Brian M. Berliner, Esq.  
O'MELVENY & MYERS LLP  
400 South Hope Street  
Los Angeles, CA 90071-2899

EXAMINER
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ZIMMERMAN, BRIAN A

ART UNIT	PAPER NUMBER
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2612

MAIL DATE	DELIVERY MODE
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12/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	Application No. 10/723,430	Applicant(s) YOUNG ET AL.	
	Examiner Brian A. Zimmerman	Art Unit 2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Status of Application***

In response to the applicant's amendment received on 3/23/07. The examiner has considered the new presentation of claims and applicant arguments in view of the disclosure and the present state of the prior art. And it is the examiner's position that claims 1-21 are unpatentable for the reasons set forth in this office action:

1. Claims 1-17, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Borgstahl (5909183) and Nagata (6970096).

The applicant's disclosure [0009] discusses the many model train systems include a remote control for controlling different train engines on the track, as well as for controlling accessories. The remote control normally sends commands either wirelessly or through a base device connected to the tracks. The command will include an address, which the user typically has to key in before or after hitting the command button. Each engine sees the transmissions, either wirelessly, or by picking up signals sent along the tracks. Each engine will only respond to commands with the address of that engine.

In an analogous art, Borgstahl also teaches a remote control system where the controller and the controlled object are programmed to be associated with each other prior to the signaling to control the object. Borgstahl teaches though, the object being controlled sends a signal to the controller such that the controller can learn the identity and features of the controlled object, thereby allowing the controller to access the full

features of the object being controlled. Using a bi-directional link would require a receiving element near or associated with the transmitting element 23. This would allow the remote controller to know what abilities the object possesses. This also permits a less intelligent controlled object since the object only needs to listen to commands and addresses and need not have the ability to reprogram itself.

Therefore it would have been obvious to have used the programming method of Borgstahl to program the train vehicle controller of the admitted prior art since this would permit flexibility in the system since the controller could be used to control the vehicle in endless configurations.

In an analogous art, Nagata recognizes a problem with programming of train vehicles. Nagata prevents the accidental programming of the wrong train vehicle by placing the train in a box during programming. Communicating with a model vehicle for programming the system and then provide control signals to the model vehicle. The system of Nagata includes a control device 2 that communicates with a first device (train 1) when the first device is located near the control device; actually the first device is placed within the recess 21d of the control device. This narrow IR transmission (LED 23) is used to program the first device for future communication using a second communication link from LED 22 on the opposite side of the controller. There is also a barrier around the LED 23.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the containment mechanism of Nagata to ensure the

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programming of the above discussed system is not accidentally programming a 'non-desired' train.

Regarding claim 8, the examiner took official notice that the use of barcode as readable identifier of the train would be verily common since barcodes to identify items is often used in the art. The applicant did not question the taking of Official Notice therefore it is taken that this feature is admitted prior art. MPEP 2144.03 (c) which states:

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.

Regarding claim 17, the examiner took official notice that the location of the elements is well within the skill of the ordinary artisan. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) (Claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device.); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975) (the particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice). The applicant did not question the taking of Official Notice therefore it is taken that this feature is admitted prior art. MPEP 2144.03 (c).

2. Claims 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art, Borgstal and Nagata as applied to the claims above, and further in view of Young (5749547).

In an analogous art, Young teaches the communication of commands to the train units being over the train tracks. This provides the ability to control the trains as long as they are connected to the track even when the train may be in a tunnel and be out of sight.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the train tracks to communicate commands over the tracks as taught by Young, since this would ensure communication to trains on the track.

### ***Response to Arguments***

Applicant's arguments filed 8/28/06 have been fully considered but they are not persuasive.

The applicant argues that the references fail to disclose a control(ed) object that communicates an identifier to a remote control over a spatially narrow communication link.

Borgstahl is cited for teaching a control(ed) object that communicates an identifier to a remote control (transmission 328). Nagata is cited for teaching the use of a narrow communication link during programming to control the programming step.

The applicant argues that the purpose of the invention; to simplify the process of programming is different from the purpose cited in the motivation statement of the rejection. It is noted that the claims do not recited the purpose. Furthermore, the combination of references may be motivated by a different reason than applicant's, but eliminating rogue programming signals (Nagata) makes programming of the system easier since the user would not have to go back and reprogram a train after it mistakenly got reprogrammed.

The applicant argues that bar code readers have nothing to do with claim 8. On the contrary, claim 8 recites a remote control device transmits a signal which is reflected off a reflective code on said device. A bar code is a reflective code and reading a barcode requires reflecting a signal of the reflective code.

The applicant argues that the location of the transmitter of claim 17 is not obvious. The examiner disagrees, the location of the elements is well within the skill of the ordinary artisan. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) (Claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the

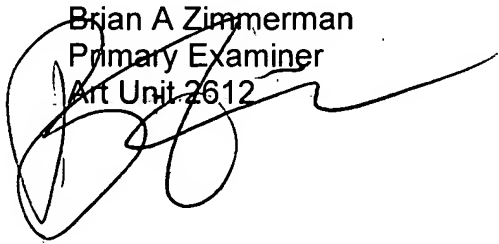
starting switch would not have modified the operation of the device.); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975) (the particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian A. Zimmerman whose telephone number is 571-272-3059. The examiner can normally be reached on 7 am to 4 pm E.S.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu can be reached on 571-272-2964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian A Zimmerman  
Primary Examiner  
Art Unit 2612



BZ